

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Erin Donovan	Team: Team # 6	CCRB Case #: 200810131	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 07/10/2008 7:57 PM	Location of Incident: 30 Linden Boulevard	Precinct: 70	18 Mo. SOL 1/10/2010	EO SOL 1/10/2010	
Date/Time CV Reported Wed, 07/16/2008 11:54 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 07/16/2008 11:54 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Leonard Clarke	27183	940013	070 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Joshua Baez	05276	938010	070 PCT
2. SGT Edmund Small	01474	920846	070 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Leonard Clarke	Force: PO Leonard Clarke used physical force against § 87(2)(b)	
B.POM Leonard Clarke	Abuse: PO Leonard Clarke strip-searched § 87(2)(b)	

Synopsis

On July 16, 2008, § 87(2)(b) filed a complaint with the CCRB via the telephone. He stated that on July 10, 2008 in front of 30 Linden Boulevard in Brooklyn, PO Leonard Clarke and PO Joshua Baez both of the 70th Precinct stopped him. § 87(2)(b) alleged that PO Clarke punched him in the mouth (Allegation A). § 87(2)(b) was arrested for § 87(2)(b). He alleged that PO Clarke strip-searched him and the command log did not have any notation of a strip-search (Allegation B).

§ 87(2)(g)

Summary of Complaint

§ 87(2)(b)

On July 16, 2008, § 87(2)(b) filed a complaint with the CCRB via the telephone (enc. 5a-b). § 87(2)(b)'s arrest photo does not show any visible injuries (enc.6e). On August 19, 2008, § 87(2)(b) was interviewed at the CCRB (enc.6a-e). § 87(2)(g)

On July 10, 2008, in the vicinity of 30 Linden Boulevard in Brooklyn, § 87(2)(b) was outside of the building waiting for his friend to come outside for less than five minutes. His friend lives on § 87(2)(b), but was meeting § 87(2)(b) in front of the building at 30 Linden Boulevard. § 87(2)(b) sat on the left hand side of the building on a window ledge. § 87(2)(b)'s friend, § 87(2)(b) was standing next to him. PO Clarke (male, black, dark skin, big brown eyes, stocky, 160lbs, 5'8") and PO1 (male, 5'6", Hispanic or white, bald head), identified by the CCRB as PO Baez, approached § 87(2)(b). PO Clarke asked him to get down from where he was sitting and he complied with their command. PO Baez stated that he saw § 87(2)(b) do a movement where he put something toward his mouth. PO Baez grabbed § 87(2)(b)'s right hand and placed it behind his back. He then turned § 87(2)(b) to face the wall and placed him against the wall. PO Clarke ran over and punched § 87(2)(b) in his mouth. PO Clarke did not say anything to § 87(2)(b) and punched him one time in the jaw with a closed fist. It was on the right side of § 87(2)(b)'s face.

PO Baez handcuffed § 87(2)(b) directly after PO Clarke punched him. PO Baez looked inside of § 87(2)(b)'s mouth to see if anything was inside. The officers did not see anything in his mouth. § 87(2)(b) was then placed under arrest. PO Clarke and PO Baez placed § 87(2)(b) in handcuffs. While § 87(2)(b) was transported to the precinct, the officers continued to check his mouth by looking inside of it and did not find anything.

While at the precinct, § 87(2)(b) was strip-searched. PO Clarke strip-searched § 87(2)(b) before he was placed in the cell. They went inside of the bathroom, which is located across from the cells. PO Clarke told § 87(2)(b) to drop his pants and boxers. He complied. PO Clarke then told him to squat. PO Clarke did not find anything on § 87(2)(b). § 87(2)(b) was the only prisoner in the bathroom at the time of the strip-search and PO Clarke was the only officer that was present for the strip-search. § 87(2)(b) was charged with tampering with evidence and possession of marijuana. § 87(2)(b) denied having any marijuana. § 87(2)(b) is not aware if the officers found any marijuana on the scene. § 87(2)(b) had a small cut in his mouth from PO Clarke punching him, but he did not receive any medical treatment.

Results of Investigation

Attempts to contact additional witnesses

The investigator attempted to call § 87(2)(b) several times between the dates of October 23, 2008 and December 17, 2008. § 87(2)(b) called the investigator on October 23, 2008 and scheduled an appointment for October 24, 2008, which he missed without previously contacting the investigator. Letters were sent to § 87(2)(b) on October 23, 2008 and October 24, 2008, which were not returned to the agency. The investigator called § 87(2)(b)'s phone two more times following his missed appointment and it was not in service.

Identification of Officers Interviewed

§ 87(2)(b) identified PO Clarke by name, which he read off his badge and he was listed as his arresting officer, therefore he was interviewed by the CCRB. PO Baez was listed on roll call working with PO Clarke, therefore he was interviewed by the CCRB. Sgt. Small was listed on § 87(2)(b)'s command log entry as verifying the arrest, therefore he was interviewed by the CCRB.

Officer Statement: Officer Leonard Clarke

On February 18, 2009 Officer Leonard Clarke (male, black, 5'11", 301lbs, black hair and brown eyes) was interviewed at the CCRB (enc. 10a-b). On July 10, 2008, PO Clarke worked from 12:00pm to 8:00pm and was assigned to conditions. He worked with PO Baez and was dressed in uniform. He was assigned to a marked vehicle. In his memo book, he stated at 7:40pm there was a vertical at 35 Linden Boulevard. At 7:50pm, three males were stopped. At 7:58pm 3 males were under arrest for criminal possession of marijuana. At 8:10pm, transporting back to precinct, 1 male attempted to swallow marijuana, perp 2 stomped on it. PO Clarke prepared arrest reports for § 87(2)(b) and § 87(2)(b) which stated that they were observed smoking a lit marijuana cigarette in public view. When PO Clarke ordered § 87(2)(b) to stop he swallowed cigarette and threw a cigarette. They were both charged with tampering with evidence and § 87(2)(b) was also charged with criminal possession of marijuana (enc.).

On July 10, 2008 at approximately 7:40pm, PO Clarke and PO Baez went to do a vertical patrol inside of 35 Linden Boulevard and on the way inside of the building PO Clarke noticed two males on the left side of the building next to the library sitting on a ledge. The individuals, identified as § 87(2)(b) and § 87(2)(b) were smoking a lit marijuana cigarette. PO Clarke was able to tell it was marijuana because of the brown and green coloring and he smelled the marijuana. It was a cigarette in brown wrapping. PO Clarke observed them for about 1-2 minutes. PO Clarke and PO Baez attempted to sneak up on them, but § 87(2)(b) saw the officers and attempted to swallow the marijuana. § 87(2)(b) threw marijuana on the ground and stomped on it with his foot. PO Clarke approached § 87(2)(b) and attempted to grab his hand to prevent him from swallowing the marijuana. When PO Clarke grabbed § 87(2)(b)'s hand, PO Clarke's hand swiped § 87(2)(b)'s face. PO Clarke's back part of his hand lightly hit § 87(2)(b)'s cheek. It did not cause an injury. PO Clarke attempted to grab his hand and § 87(2)(b) ducked down and his open right hand hit his mouth. § 87(2)(b) swallowed the marijuana and PO Clarke did not go inside of his mouth to retrieve it. § 87(2)(b) said, "Why did you punch me? You are always harassing me." PO Clarke did not punch § 87(2)(b) in the mouth. PO Clarke was not able to fully recover the marijuana, but placed § 87(2)(b) under arrest. PO Clarke did recover some marijuana residue from the ground. PO Clarke placed § 87(2)(b) against the wall and handcuffed him. PO Clarke then searched § 87(2)(b). § 87(2)(b) was very uncooperative by cursing and yelling. He was moving his arms so that it was difficult to handcuff him. PO Clarke was able to handcuff § 87(2)(b) by himself and he was standing up when handcuffed.

PO Baez effected § 87(2)(b)'s arrest. PO Clarke did not see what was happening with PO Baez and § 87(2)(b) because he was focused on § 87(2)(b). PO Clarke and PO Baez were able to cover marijuana residue off the ground and off the ledge. There was another individual on the scene, who received a summons for disorderly conduct because he was interfering in the arrest. PO Clarke believed he was with § 87(2)(b) and § 87(2)(b). § 87(2)(b) and § 87(2)(b) were transported back to the precinct. PO Clarke stated that there was no strip-search performed on § 87(2)(b) at the precinct. § 87(2)(b) did not have any injuries and did not ask for any medical treatment.

Officer Statement: Officer Joshua Baez

On February 25, 2009, Officer Joshua Baez (male, Hispanic, 5'10", 220lbs, black hair and brown eyes) was interviewed at the CCRB (enc. 12a-b). On July 10, 2008, PO Baez worked from 3:00pm to 11:35pm and was assigned to conditions auto. He worked with PO Clarke and was dressed in uniform. They were assigned to RMP# 1747. PO Baez did not have any relevant memo book entries regarding the incident.

On July 10, 2008, PO Baez did not recall the incident. The investigator explained the circumstances of what happened and the two individuals were arrested for marijuana. The investigator showed PO Baez arrest photos of § 87(2)(b) and § 87(2)(b) which he did not recognize.

Officer Statement: Sergeant Edmund Small

On April 14, 2009, Sgt. Edmund Small (male, black, 5'11", 200lbs, bald, brown eyes) was interviewed at the CCRB (enc. 14a-b). On July 10, 2008, Sgt. Small worked from 12:00pm to 9:57pm and was assigned as the SNEU supervisor. He worked with PO Slade and was dressed in uniform. They were assigned to RMP# 2500. Sgt. Small did not have any relevant memo book entries.

On July 10, 2008, Sgt. Small worked as the SNEU supervisor and was in the precinct when § 87(2)(b) was being processed. Sgt. Small did not remember § 87(2)(b) but he spoke to PO Clarke about the arrest and stated that he would not authorize a strip-search for a marijuana arrest. Sgt. Small indicated that he verified the arrest and it was his hand-writing on the command log. The investigator explained that § 87(2)(b) attempted to swallow the marijuana and Sgt. Small stated that even under those circumstances he would not authorize a strip-search. Sgt. Small also indicated that if a strip-search is conducted he would have to authorize it.

Police Department Documents

The command log lists PO Clarke as the arresting officer for § 87(2)(b) and § 87(2)(b). Both of their physical appearances are listed as good and there is no note of strip-searches for either of the entries. Sgt. Small signed off on both arrests (enc.17a). The holding pen roster does not note a third male being brought to the precinct or held in the holding pen roster (enc.19a-c).

Civilian Criminal History

§ 87(2)(b)) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

CCRB Histories

PO Clarke had allegations of physical force, vehicle stop and vehicle searched substantiated in CCRB Case# 200717254, which he received charges (enc.2a-b). § 87(2)(b) has never previously filed a complaint with the CCRB (enc.4a).

Conclusions and Recommendations**Officer Identification**

§ 87(2)(b) provided PO Clarke's name and physical description in his CCRB statement. PO Clarke's CCRB interview confirmed his involvement in the incident and his pedigree information matched § 87(2)(b)'s physical description of the subject officer. § 87(2)(g)

Undisputed Facts

It is undisputed that PO Clarke and PO Baez stopped and arrested § 87(2)(b) and § 87(2)(b)

Disputed Facts

§ 87(2)(g)

Assessment of Evidence

§ 87(2)(b) alleged that PO Clarke punched him in the mouth during his arrest. § 87(2)(b) did not receive any injuries and did not receive medical treatment. PO Clarke admitted that he accidentally hit § 87(2)(b)'s mouth while attempting to have him spit out drugs. He denied punching him in the mouth. § 87(2)(b) also alleged that PO Clarke strip-searched him, which PO Clarke denied. There was no note in the command log that § 87(2)(b) was strip-searched. § 87(2)(g)

PO Baez did not recall the incident and § 87(2)(b) was

uncooperative with the investigation. PO Clarke indicated that there was an unidentified male on the scene, who received a summons, but there was no police documentation regarding the individual and § 87(2)(b) did not mention him in his testimony, § 87(2)(g)

Allegation A) PO Leonard Clarke used physical force against § 87(2)(b)

§ 87(2)(b) alleged that PO Clarke punched him in the face, but he denied the allegation.

§ 87(2)(g)

Allegation B) PO Leonard Clarke strip-searched § 87(2)(b)

According to the Patrol Guide, strip-searches are conducted, “when the arresting officer reasonably suspects that weapons, contraband or evidence may be concealed upon the person or in the clothing in such a manner that they may not be discovered by previous search methods” (enc. 1a-b), § 87(2)(b)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: